

**BILL  
HALTER**  
FOR U.S. SENATE

RECEIVED  
FEDERAL ELECTION  
COMMISSION

MAY 19 PM 4:26

OFFICE OF GENERAL  
COUNSEL

May 6, 2010

Thomaseenia P. Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, S.E.  
Washington, D.C. 20463

MUR # 6294

Re: Complaint Against Americans for Job Security

Dear Ms. Duncan :

The Bill Halter for Senate committee is writing to file a complaint, in accordance with the Federal Election Commission's rules, against Americans for Job Security ("AJS"), for blatantly violating the Federal Election Campaign Act of 1971, as amended, and the Commission's rules, by spending more than \$900,000 running an electioneering communication viciously attacking Lt. Gov. Halter without disclosing any of the donors who paid for the advertisement. The failure and refusal of AJS to disclose who funded this advertisement is simply a blatant, knowing and willful violation of the law.

As explained below in detail, *first*, although AJS indicates in its electioneering communications report that it is relying on the regulatory exception for true issue advocacy (11 C.F.R. §114.15, that exception is no longer viable in view of the Supreme Court's decision in *Citizens United*. Second, even if that regulatory exception continues to apply, the advertisement run by AJS does not remotely qualify for it.

The Bill Halter for Senate committee (the "Halter Campaign") is the authorized committee of Arkansas Lt. Gov. Bill Halter, who is seeking the Democratic nomination for U.S. Senate in Arkansas. The primary election will take place May 18, 2010. The Halter Campaign's address is 424 West 4<sup>th</sup> Street, North Little Rock, Arkansas 72114.

AJS is a District of Columbia nonprofit corporation organized under section 501(c)(6) of the Internal Revenue Code, the address of which is 107 South West Street, PMB 551, Alexandria, VA 22314.

501.376.2727 ★ P.O. Box 94226, North Little Rock, Arkansas 72190  
[www.billhalter.com](http://www.billhalter.com)

Paid for by Bill Halter for Senate.

Printed on recycled paper using soy inks for a cleaner environment.

### **I. The Advertisement—"Outsourcing"**

The AJS advertisement in question, "Outsourcing," charges that "as a corporate board member, Bill Halter outsourced American jobs to Bangalore, India." The advertisement goes on to repeat the charge, and depicts Indians in traditional Indian garb saying "Thank you Bill Halter." A description of and transcript of the graphics and audio of the advertisement is attached hereto as Exhibit 1.

This advertisement was run on broadcast and cable stations in the Little Rock, Fort Smith and Jonesboro markets, and on cable in the Memphis, Monroe-El Dorado, Shreveport and Springfield markets.

It is undisputed that the advertisement is an "electioneering communication" within the meaning of the Act, 2 U.S.C. §434(f)(93), and the Commission's rules, 11 C.F.R. §100.29. AJS filed an 24-Hour Notice of Disbursements for Electioneering Communications, on FEC Form 9, on May 3, 2010. (A copy of the form is attached hereto as Exhibit 2). The Form 9 discloses that AJS spent \$893,596 purchasing time for the advertisement—an astronomical and, it is believed, unprecedented sum for a single time buy in an Arkansas primary election.

### **II. Regulatory Background**

The Act, as amended by the Bipartisan Campaign Reform Act of 2002, requires that every group that makes an "electioneering communication" must file a report disclosing either (i) the names and addresses of all contributors of over \$1,000 to the group in the previous year and the year to date; or (ii) if the group has a segregated bank account consisting of contributions only from individual U.S. citizens and permanent residents, the names and addresses of all donor to that account, during that same period. 2 U.S.C. §§434(f)(2)(E) & (F). There is *no* exception in the statute for any particular type of advertisement.

In *Federal Election Comm'n v. Wisconsin Right to Life*, 551 U.S. 449 (2007) ("WRTL"), the Court held that the Act's ban on "electioneering communications" using corporate funds or made by a corporation, could not be applied to communications that are "true" issue advocacy communications in the sense that they are not the "functional equivalent of express advocacy." To implement the decision, the Commission adopted revisions to its regulations regarding the disclosure requirements for "electioneering communications."

Under the Commission's revised regulations, an "electioneering communication" may be made by a corporation or union using corporate or union funds if it meets certain criteria

indicating that it is a "true" issue ad, what the Commission calls a "permissible electioneering communication." 11 C.F.R. §114.15.

The nature of the disclosure requirements then turns on whether there is a segregated account, whether the electioneering communication is a "permissible" one, whether the entity that disseminated the ad did so from a separate "electioneering" account and how the funds were solicited:

- (1) If the group running the advertisement maintains a segregated "electioneering" account consisting of contributions from individuals, all donors who contributed \$1,000 or more since the prior calendar year must be disclosed, *regardless* of the nature of the advertisement (11 C.F.R. §§104.20(c)(7)(i) & (c)(7)(ii)).
- (2) If the group running the advertisement does not maintain such a segregated account, and the advertisement is not a "permissible electioneering communication," i.e., not a "true" issue advocacy advertisement, all donors who contributed \$1,000 since the prior calendar year must be disclosed. (11 C.F.R. §104.20(c)(8)).
- (3) If the group running the advertisement does not maintain such a segregated account, the advertisement is a "permissible electioneering communication," and contributions were earmarked for that communication, the donors must be disclosed. (11 C.F.R. §104.20(c)(9)).
- (4) Only in the case where the group running the advertisement does not maintain such a segregated account, the advertisement is a "permissible electioneering communication" and no donations were earmarked for the ad, are the donors *not* required to be disclosed.

### **III. Discussion**

#### **A. The WRTL Exemption Is No Longer Applicable**

As noted above, the statutory requirement that donors be disclosed to any group running any type of "electioneering communication" contains *no* exception for any particular type of advertisement. There is no statutory basis, therefore, for the exemption created by the Commission for "permissible electioneering communications," not paid for from a segregated account, and not made with earmarked funds. The only basis for that exception was the Court's decision in *WRTL* which the Commission interpreted to allow an exception to the disclosure requirements for "true" issue advertisements as described in *WRTL*.

The Supreme Court's decision in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), of course, makes irrelevant any distinction between "true" issue advocacy

advertisements and "functional equivalent of express advocacy" advertisements, for purposes of the ban on use of corporate funds for electioneering communications. With that distinction gone, there is simply no basis for the Commission to make that distinction for purposes of the disclosure requirements of section 434 of the Act.

Indeed, Citizens United argued that the disclosure requirements should be limited to advertisements that contain express advocacy or its functional equivalent. The Court rejected that argument and upheld the statutory disclosure requirements, in full, with no exceptions: "We reject this contention....we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy." 130 S. Ct. at 915.

In this case, Americans for Job Security has failed to indicate on its Form 9 whether the disbursements for the "Outsourcing" advertisements were made from donations to a segregated bank account. If they were, of course, AJS was unquestionably required to disclose those donors.

Even if the disbursements were not made from a segregated account, and were not made from earmarked contributions, the exemption on which AJS relies is no longer valid, for the reasons explained above. Accordingly, AJS has violated the Act by failing to disclose its donors.

**B. The Exemption for "True" Issue Advertisements Does Not Apply**

Even if the regulation creating an exemption from donor disclosure for "permissible electioneering communications" not made from a segregated account or earmarked funds were still valid, the AJS "Outsourcing" advertisement clearly does not qualify for that exemption. The advertisement does not remotely meet the tests for a "true" issue ad—a "permissible electioneering communication" as defined in 11 C.F.R. §114.15.

To qualify as such an advertisement, an ad must meet three criteria:

- (1) It does not mention any election, candidacy, political party, opposing candidate or voting;
- (2) It "[d]oes not take a position on any candidate's or officeholder's character, qualifications, or fitness for office;" and
- (3) The ad either
  - (i) "Focuses on a legislative, executive or judicial matter or issue; and

- (a) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or
- (b) Urges the public to adopt a particular position and to contact the candidate with respect to the matter or issue; or
- (ii) Proposes a commercial transaction....."

110044373125

The "Outsourcing" ad does not mention any election or candidacy. But it clearly does take a position on Lt. Gov. Halter's "character, qualifications or fitness for office." As Lieutenant Governor, Mr. Halter obviously has nothing whatsoever to do with U.S. trade policy. The vicious, racially offensive and, incidentally, completely inaccurate attack on Lt. Gov. Halter is based on his tenure as a director of a *private corporation*. The advertisement's reference to Lt. Gov. Halter "as a corporate board member" is to Lt. Gov. Halter's service on the board of webMethods, Inc., a technology company, from 2003 until 2007. A 2004 Washington Post article reported that the company, in 2004, opened a small 58-person office in Bangalore, India, saving costs. However, the article did *not* state that any U.S. jobs were re-located to that office or to any other foreign location and in fact that never happened.

Further, the outsourcing of jobs by this private corporation six years ago is not a "legislative, executive or judicial matter or issue...." It is not an issue on which any level of government made any decision and is not proposed as an issue for any level of government. Furthermore, the ad does not discuss any positions taken by Lt. Governor Halter during his campaign regarding outsourcing or otherwise clarify his position on the issue. The advertisement focuses exclusively on Lt. Governor Halter's personal history. In addition, the appendage of an exhortation for viewers to contact Lt. Governor Halter does not change the conclusion that the ad does not qualify as a pure issue advertisement. See Explanation and Justification, *Electioneering Communications*, 72 Fed. Reg. 72899, 72909 (December 26, 2007).

For these reasons, the "Outsourcing" advertisement does not remotely begin to qualify as a "permissible electioneering communication" under section 114.15 of the Commission's rules.

### **CONCLUSION**

For the reasons set forth above, the Commission should find reason to believe that that Americans for Job Security has knowingly and willfully violated the Act, 2 U.S.C. §434(f), and the Commission's regulations, 11 C.F.R. §104.20 and require Americans for Job Security to disclose the source of funds for these "electioneering communications."

Thomasenia P. Duncan, Esq.  
Federal Election Commission  
May 6, 2010  
Page 6

Respectfully submitted,

*Carol Butler*

Carol Butler  
Campaign Manager

Subscribed and sworn to before me this 7<sup>th</sup> day of May 2010.

*[Signature]*

Notary Public

My commission expires: \_\_\_\_\_



# EXHIBIT 2

1504744051  
JUN 7 11 27

**FEC FORM 9  
24 HOUR NOTICE OF DISBURSEMENTS/OBLIGATIONS FOR  
ELECTIONEERING COMMUNICATIONS**

05/03/2010 15:03

**1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations**

(a) Name

Americans for Job Security

(b) Address (number and street)

☐ check if different than previously reported

107 South West Street, PMB 551

(c) City, State and ZIP Code

Alexandria

VA

22314

**2. FEC Identification Number**

C 00000000

(d) Name of Employer or Principal Place of Business

(e) Occupation

**3. Is This Statement**



New

or



Amended

**4. Covering Period**

"05 / "03 / "2010"

through

"05 / "04 / "2010"

**5. (a) Date of Public Distribution(s)** "05 / "03 / "2010"

**(b) Communication Title** Thank You

**6. The filer is a(n):** (a) ☐ Individual

(b) ☐ Unincorporated Organization

(c) ☐ Qualified Nonprofit Corporation (11 CFR 114.10)

(d) ☒ Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.10

(e) ☐ Other, specify: \_\_\_\_\_

**7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account?**

Yes ☐

No ☐

**8. Custodian of Records**

(a) Name

Dellaure Stephen

(b) Address (number and street)

107 South West Street

(c) City, State and ZIP Code

Alexandria

VA

22314

(d) Name of Employer or Principal Place of Business

Americans for Job Security

(e) Occupation

President

**9. Total Donations This Statement**

.00

**10. Total Disbursements/Obligations This Statement**

\$13086.00

Under penalty of perjury, I certify that this statement is true, correct and complete.

TYPE OR PRINT NAME OF PERSON COMPLETING FORM

Stephen Dellaure

SIGNATURE Electronically Filed by Stephen Dellaure

DATE 05/03/2010

NOTE: Submission of false, erroneous or incomplete information may subject the person signing this statement to the penalties of 2 U.S.C. 437g.

10030321386

11007474440000



**SCHEDULE B-B**  
**Disbursement(s) Made or Obligations**


PAGE 2/2

<b>A. Full Name (Last, First, Middle Initial) of Payee</b> Crossroads Media					<b>Date of Disbursement or Obligation</b> MM / DD / YYYY 05 / 03 / 2010	
<b>Mailing Address of Payee</b> 66 Canal Center Plaza Suite 555					<b>Amount</b> 883588.00	
<b>City</b> Alexandria		<b>State</b> VA	<b>Zip Code</b> 22314		<b>Communication Date</b> MM / DD / YYYY	
<b>Name of Employer</b>			<b>Occupation</b>		<b>Transaction ID:</b> FB3.000001	
<b>Purpose of Disbursement (including title(s) of communication(s))</b> Placement Costs: Thank You						
<b>Name of Federal Candidate</b> Hester William		<b>Office Sought:</b> X House Senate President	<b>State:</b> AR	<b>Disbursement/Obligation For:</b> 2010 X Primary General		
<b>FB3.000002</b>		<b>Other (specify)</b>				
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>B. Full Name (Last, First, Middle Initial) of Payee</b> WWP Strategies						
<b>Mailing Address of Payee</b> 66 Canal Center Plaza Suite 555					<b>Date of Disbursement or Obligation</b> MM / DD / YYYY 05 / 03 / 2010	
<b>City</b> Alexandria					<b>State</b> VA	<b>Zip Code</b> 22314
<b>Name of Employer</b>			<b>Occupation</b>		<b>Amount</b> 19500.00	
<b>Name of Employer</b>					<b>Communication Date</b> MM / DD / YYYY	
<b>Name of Employer</b>					<b>Transaction ID:</b> FB3.000002	
<b>Purpose of Disbursement (including title(s) of communication(s))</b> Production: Thank You						
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>Name of Federal Candidate</b>		<b>Office Sought:</b>	<b>House Senate President</b>	<b>State:</b>	<b>Disbursement/Obligation For:</b> Primary General	
<b>SUBTOTAL of Disbursement/Obligation This Page (optional)</b>					913088.00	
<b>TOTAL This Period (last page this line number only)</b> (carry total from last page to line 10)					913088.00	

10030321387

CONFIDENTIAL

**Federal Election Commission**  
**ENVELOPE REPLACEMENT PAGE FOR INCOMING DOCUMENTS**  
The FEC added this page to the end of this filing to indicate how it was received.

<input type="checkbox"/> Hand Delivered	Date of Receipt
<input type="checkbox"/> USPS First Class Mail	Postmarked
<input type="checkbox"/> USPS Registered/Certified	Postmarked (R/C)
<input type="checkbox"/> USPS Priority Mail	Postmarked
Delivery Confirmation™ or Signature Confirmation™ Label <input type="checkbox"/>	
<input type="checkbox"/> USPS Express Mail	Postmarked
<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> No Postmark	
<input type="checkbox"/> Overnight Delivery Service (Specify):	Shipping Date
Next Business Day Delivery <input type="checkbox"/>	
<input type="checkbox"/> Received from House Records & Registration Office	Date of Receipt
<input type="checkbox"/> Received from Senate Public Records Office	Date of Receipt
<input type="checkbox"/> Received from Electronic Filing Office	Date of Receipt
<input checked="" type="checkbox"/> Other (Specify): <i>Webform # 421</i>	Date of Receipt or Postmarked <i>5/3/10</i>
 <b>PREPARER</b> (3/2005)	<i>5/3/10</i> <b>DATE PREPARED</b>

10030321388

10030321388